No. 15,197

IN THE

United States Court of Appeals

For the Ninth Circuit

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

Appellant,

vs.

AKIRA MORIMOTO,

Appellee.

Upon Appeal from the United States District Court for the Southern District of California, Northern Division.

BRIEF OF APPELLEE.

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Upon Appeal from the United States District Court for the Southern District of California, Northern Division.

BRIEF OF APPELLEE.

JURISDICTION.

Appellee sued to recover property which had been vested under 50 *U.S.C.* App. Sec. 1 *et.seq.,* the Trading with the Enemy Act (R. 3). The suit is, in effect, one commenced under Sec. 9(a) of the Act (R. 13). Appellee also contended in the District Court that because appellee was a citizen, the confiscation of his property under the Trading with the Enemy Act would be contrary to the Fifth Amendment to the Constitution of the United States (R. 6, 40).

After trial judgment was entered in the District Court in favor of the appellee on April 20, 1956 (R. 35). Notice of appeal was filed on June 11, 1956 (R. 36). The jurisdiction of this court is based on 28 *U.S.C.,* Sec. 1291.

STATEMENT OF THE CASE.

Appellee was born in Fresno, California, on April 18, 1912. His parents were Japanese citizens and they never acquired American citizenship. Appellee has been a citizen of both the United States and Japan at all times since his birth (Finding V, R. 31).

Appellee was taken by his parents to Japan in 1924. His parents never returned to this country. Prior to 1924, appellee had attended grammar school in Fresno, and thereafter continued his education in Japanese schools, completing grammar school and high school in Hiroshima, graduating in 1930. When appellee reached the age of twenty years he became subject to compulsory military service in the Japanese Army. He was excused from taking the physical examination because he was attending medical college and was granted a deferment until he completed his medical course. Upon completion of his medical education he reported for duty at an army camp in Tokyo and entered the Army as a medical officer candidate in October of 1938. He served as a doctor in the Army and was stationed in Manchuria until September 9, 1945, when he was captured by the Russians and taken to Siberia. He was held as a prisoner of war by the

Russians until December 4, 1948, when he was released and returned to Japan. Appellee was very ill when he was returned to Japan, such illness having been caused by malnutrition during the aforesaid imprisonment, and he returned to the United States, filed claim for the return of his property which had been vested by appellant (R. 29, 30), and commenced this action as soon as he reasonably could (Finding VI, R. 31-32).

The aforesaid service of the appellee in the armed forces of Japan was in obedience to the laws of Japan, of which appellee was a national. Such service by the appellee after the commencement of the war between Japan and the United States on December 8, 1941, was involuntary on his part (Finding VII, R. 32).

Only the last sentence of the foregoing is controverted in appellant's brief (page 8, paragraph 3).

Evidence That Appellee's Military Service Was Involuntary.

Appellee testified concerning his entry into the Japanese Army as follows (R. 59):

> "Q. Were you conscripted as a private soldier in the army at that time?
>
> "A. Yes, sir. That is the general rule that the army acts. Every people in Japan is conscripted as a soldier, but there were opportunity for the technical people, like myself, if I want to be the doctor, then they give me the position as a doctor; and if I didn't want to be a doctor, I have to be a soldier, and if I want to be a soldier I have to stay there three years in army, and if I become doctor then the year is only two years, and also the title would be doctor. There

is a little privilege for becoming a doctor officer. But in the true sense at that time that I am army doctor I am half civilian and half army because every military man we didn't have full rights as a soldier. That is the system at the time of the army."

However, the principal, and we think conclusive, basis for Judge Jertberg's decision on this point is found in the following testimony (R. 79):

"Q. What happened at the end of two years?

A. End of the two years I was enlisted as a reserve officer and also was drafted to continue my duty.

Q. Did you have any right or opportunity to drop of the service?

A. Yes, I made a petition I want to be out of the service, but that was refused.

Q. In other words, the two-year rule had been abrogated?

A. That was the promise and I was expecting to be out of the army at that time."

Corroboration for this in part is found in the following portion of a Japanese document relating to appellee's military service introduced in evidence by appellant (R. 125):

"Dec. 15, 15th year of Showa (1940).

Transferred to the Reserve and on the same dated received Extraordinary Summons Order."

Also, the State Department found in passing on appellee's application for a passport to return to this country that appellee could not have got out of the Army after January, 1940 (R. 144, 134).

Appellee's promotion to the rank of captain was an automatic promotion based upon length of service and appellee resisted pressure placed upon him to leave the reserve and join the regular army even though certain advantages would have accrued to him if he had done so (R. 81).

Evidence Relating to Domicile.

In referring to Japan in this brief, we include Manchuria, where appellee's army service occurred. Section 2(a) of the Act defines enemy territory as including that occupied by enemy armed forces. While the legal status of Manchuria during the period in question is obscure, it apparently was occupied by Japanese Forces. See Encyclopedia Americana, 1956 ed., vol. 18, p. 202.

On the question of residence, the issue submitted to the District Court by the parties was whether appellee was resident within Japan at the date of vesting. Appellant, however, now contends that if appellee was a resident of Japan at any time during the war, he was a resident within Japan under the Trading with the Enemy Act. In so arguing appellant relies principally on the law of domicile. We will contend under the heading "Residence" in this brief that the District Court correctly defined and decided this issue, but in view of appellant's contentions we will here discuss the evidence relating to appellee's domicile.

Since appellee was only twelve years old when he was taken to Japan by his parents in 1924, the question of his parents' domicile is material. His parents

had resided in this country from 1898 to 1924 with the exception of two years, 1917-1919 (R. 130).

Prior to the trial of this case appellant submitted to appellee a request for admission of certain facts pursuant to Rule 36. Federal Rules of Civil Procedure. Appellee's admissions and denials in response to that request were admitted in evidence in this case (R. 83-90). In paragraph 3 of that document (R. 86) appellee said:

> "Plaintiff does not believe that his parents intended to permanently reside, or establish domicile, in Japan when they left this country in 1924.
>
> "At that time plaintiff's father was in ill health and for that reason sold his business, a soft drink bottling works, and returned to Japan. He was then fifty-five years of age. He sold the business to a partnership consisting of his son Kaoru Morimoto, and one H. Kimura, even though, as plaintiff is informed, a much higher price for the business was offered by another company. The partners above-named agreed in the written contract of sale of said business not to sell the business without the consent of plaintiff's father. This indicates plaintiff's father wanted to keep the business within the family so that he would have a foothold here whenever he returned. The real property described in the complaint in this action and on which the aforesaid business was located was never sold by plaintiff's father and was owned by him until his death, at which time it went to plaintiff under his father's will. Plaintiff's father also had a 110-acre ranch in Fresno County which he kept until 1932 in spite of the hardship of maintaining it during the depression

years. Also, large sums of money were owed to plaintiff's father by people in the United States, in 1924 and up to the time of his death. In 1932 plaintiff's father obtained a passport to return to this country in order to look after his business interests, but died shortly before the scheduled sailing time."

In paragraph 4 (R. 87) of that document, appellee said:

> "Plaintiff further states that the real property described in the complaint in this case was in 1924 and also at the time of the commencement of this action, occupied by both a business building and a residence, which was the residence of plaintiff's parents at the time they left the United States for Japan in 1924. Plaintiff believes that said residence would have been available to plaintiff's parents if they had returned to the United States after 1924, although it was leased to said partners for a period of five years in the agreement of sale of said premises."

Six months after his arrival in Japan in 1924 appellee's father purchased a house (R. 55). That was the only property he owned in Japan (R. 79-80). Appellant's father's ill health continued while he was in Japan and he did no business while he was there (R. 79). Concerning the home in Japan appellee testified (R. 70):

> "A. Well, let me explain about this home. My father [46] purchased that home for his temporary residence, on the fact that to rent the house is very expensive, so he had some money from the financial reasons. It is more convenient

to buy the home, and so whenever he wants to come back to this country he can sell it. So I don't think he purchased the home as a permanent residence. While we were living over there naturally I considered that is my own so I return there."

Concerning his own intentions appellee testified (R. 51-52):

"Q. Was that what you had in mind, ever [22] since you went to Japan you had in mind returning here?

A. Well, at the time when I went to Japan I was so young I have no particular intention or desire, but after I attended to the medical school, that was after 20 year old, later, then I build up my intention gradually, and I wanted to come back all the time.

Mr. Aten. Yes.

The Court. Well, do I understand that after you completed your medical education——

The Witness. Yes.

The Court. In 1948——

The Witness. '38.

The Court. —'38 your intention to return was gradually developed? Is that right?

The Witness. Already at that time I was definitely trying to come back.

Q. (By Mr. Aten.) Well, I understand you to say, perhaps I was mistaken, that from the time you were 20 years old——

A. Yes.

Q. —you had that intention?

A. Intention, that is correct.

Q. So that would be 1932?

A. That is correct."

He further testified (R. 69):

"A. (By Mr. Barshay.) Do I understand correctly then that up until 1932 you had no such intention. is that correct?

A. Well, I am not sure because I was so young.

Q. Well, in 1932 you were 20 years of age, in 1931 you were 19. Did you have any such intention at that time, in 1931 when you were 19?

A. Well, I can't tell whether I had or not."

Confirming appellee's testimony concerning his intention to return to this country is the fact that all times since he was taken to Japan in 1924 appellee had two brothers and other relatives living in the United States and the property in question, which included a residence (R. 87, 88).

Appellant's brief, page 6, cites the following testimony of appellee (R. 73):

"Q. Dr. Morimoto, while you were at various stations——

A. Yes.

Q. —in the Japanese army, mostly in Korea and Manchuria——

A. Manchuria, yes.

Q. —and Siberia, as a prisoner of war of the Russians——

A. Yes.

Q. —wasn't it true that your home was in Hiroshima at those time?

A. Yes."

This testimony should be considered in the light of the District Court's implied finding as to appellee's credibility and the following evidence (R. 69-70):

"Q. Isn't it a fact that at that time you considered your father's home in Hiroshima——

A. Yes.

Q. —your permanent home?

A. Considered it home?

Q. Yes.

A. No, I didn't consider that my permanent home.

Q. Well, did you consider it your home?

A. Yes."

In connection with the evidence relating to domicile we point out that from the time appellee was taken away from this country until his release from prison camp in December, 1948, appellee was never a legally free person; from 1924 to 1932 he was a minor; when he attained majority he automatically became subject to conscription without even registering for the draft (R. 64), but was granted a deferment because he was a medical student (R. 68), so that during the period from 1932 to 1938 that legal obligation continued (as did his economic dependence on his family, (R. 88, 96); from 1938 to 1945 he was in compulsory military service; and from 1945 to 1948 he was a prisoner. After his release from imprisonment, he returned to this country as soon as he reasonably could, as found by the District Court (R. 31-32).

SUMMARY OF ARGUMENT.

The decision of this court in *Vowinckel v. First Federal Trust Co.,* 10 F. 2d 19 establishes that appel-

lee, who served Japan only as a doctor, was not an officer of Japan. Moreover the District Court found as a fact, based on substantial evidence, that appellee's service during the war between the United States and Japan was involuntary, and for that reason also, appellee was not an officer of Japan.

Appellee was not resident within Japan at the time of vesting. He had been for over two years a prisoner in Siberia and whether he would ever be returned to Japan was problematical. Both he and his property were, at the time of vesting, outside the control of Japan. Furthermore, appellee never had been a resident of Japan. He was born in the United States of parents domiciled here and he never lost his American domicile. He was taken from this country at the age of twelve without any volition on his part and circumstances beyond his control prevented his return until after the war.

It is at least doubtful under the Fifth Amendment that the property of an American citizen in appellee's circumstances may be confiscated and the Act should be construed to avoid that result.

The proviso in Section 8(c) of the Act, as construed by the courts, recognizes that the statute of limitations is tolled by war, and Section 33 of the Act, which is the statute of limitations therein, itself provides for its being tolled during the pendency of claims. Appellee's access to the courts of the United States was prevented by the war, and his claim was filed within the time permitted in Section 33 and is still pending.

ARGUMENT.

1. APPELLEE WAS NOT AN OFFICER OF THE JAPANESE GOVERNMENT.

We respectfully refer the court to Judge Jertberg's opinion on this point (R. 21-27) and to the evidence set forth under the heading "Evidence that Appellee's Military Service was Involuntary" on page 3 of this brief. Appellee was inducted into the army in 1938 for a two year period. When that period expired he petitioned for his discharge, which was refused. He resisted pressure put upon him to join the regular army. And the State Department found that he could not have got out of the army after January, 1940. The finding of the District Court that appellee's military service after December 8, 1941 was involuntary is clearly the determination of a question of fact. This court will not retry such questions. *Lew Wah Fook v. Brownell,* 218 F. 2d 924 (C.A. 9).

There is another reason for holding that appellee was not an officer of Japan. Appellee was simply a doctor and not an officer as that term is used in the Trading with the Enemy Act. Appellant's brief, pages 11 and 33, attempts to distinguish on this point the case of *Vowinckel v. First Federal Trust Company,* 10 F. 2d 19 (C.A. 9) on the ground that Vowinckel was an officer of the Red Cross rather than the German government. However, the District Court, subsequent to the opinion of this court, said in the same case (15 F. 2d 872, 874):

> "*The surgeons and physicians of all armies are officers of one rank or another, necessarily at-*

> *tached to the military forces of the various powers.* To ascribe to them the status of military officers, simply for this reason, would be to nullify the Convention of Geneva, as well as the presidential proclamation by which it was adopted as the law of our land. Without a clear expression of congressional intention to do so, the statute should not be interpreted to accomplish a result so undesirable. 'Acts of Parliament,' as was said before the existence of our present government, 'are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endamaged.' Margate Pier Company v. Hannam, 3 Barn. & Ald. 266, 270, quoting Lord Coke." (Emphasis added.)

Factually there are similarities and differences between the *Vowinckel* case and appellee's case. Both Vowinckel and appellee entered military service before the United States became involved in war. While in military service Vowinckel treated soldiers of countries at war with Germany as well as German soldiers and also treated civilians. Appellee voluntarily treated Russians while he was a prisoner in Siberia (R. 46). Vowinckel joined the German Red Cross and apparently was called a Red Cross surgeon. There is no evidence that appellee was called a Red Cross doctor, but he was interning in a Japanese Red Cross hospital at the time he was called into military service (R. 98). In one respect at least appellee's case is stronger than Vowinckel's was, for Vowinckel's service was entirely voluntary.

It is significant that this court's opinion in the *Vowinckel* case quoted Article 9 of the Geneva Convention which deals with medical personnel generally and not simply with Red Cross personnel. The following portion of the opinion is based in part on Article 9 (10 F. 2d 21):

> "While from the necessities of the case Red Cross surgeons, nurses, and chaplains are in the service of the army in time of war, they form no part of the military forces proper, and, as will be seen by reference to the convention to which the United States is a party, they shall be respected and protected under all circumstances; if they fall into the hands of the enemy, they shall not be considered as prisoners of war; they shall continue in the exercise of their functions under the direction of the enemy after they have fallen into his power; they shall receive the same pay and allowances as persons of the same grade in his own army, and when their assistance is no longer indispensable they shall be sent back to their own army or country within such period and by such route as may accord with military necessity, taking with them such effects, instruments, arms, and horses as are their private property. Under these provisions, it would seem clear that Red Cross surgeons and nurses, who are engaged exclusively in ameliorating the condition of the wounded of the armies in the field, and in alleviating the sufferings of mankind in general, are not enemies of the United States in any proper sense of that term. They may come within the letter of the statute, but they do not come within its spirit, or within the intention of Congress."

Vowinckel was held not to be an officer of Germany even though he acted voluntarily yet appellant contends that even assuming appellee's service was involuntary after December 8, 1941, appellee was still an officer within the meaning of Section 2(b) of the Act. Appellant's brief, page 31, argues that to hold otherwise "would drive a hole through the Act large enough to exempt practically all of the Axis armies." But practically all of the Axis armies would be residents of their respective countries and so covered by the definition "enemy" in Section 2(a) of the Act.

In *Hansen v. Brownell,* 132 F.S. 47 (D.C.D.C.), affirmed, 234 F. 2d 60 (C.A.D.C.), cited page 32 of appellant's brief, both the District Court and the Court of Appeals considered the question of volition to be pertinent. The finding of the lower court was predicated on the fact that Hansen went beyond the ordinary course of duty in supplying creative talent to German propaganda.

Appellant's brief, page 32, impliedly argues that appellee voluntarily offered "to undertake more responsible or onerous duties than those required by law," but Judge Jertberg said in his opinion (R. 23):

> "There is nothing in the record to indicate that during his service in the Japanese Army plaintiff performed any acts or rendered any service other than in the usual and ordinary line of duty."

Furthermore, the *Vowinckel* decision on the effect of service as a doctor is a complete answer to appellant's contention.

Appellant argues that appellee should have relied on his American citizenship to escape Japanese military service. This disregards the nature of dual citizenship, a subject which is exhaustively discussed in *Kawakita v. United States,* 343 U.S. 717, 72 S.Ct. 950. The *Kawakita* case was considered in Judge Jertberg's opinion (R. 24-26) and we will therefore limit ourselves to two brief quotations therefrom. The court said (343 U.S. 725, 72 S.Ct. 956):

> "As we have said, dual citizenship presupposes rights of citizenship in each country. It could not exist if the assertion of rights or the assumption of liabilities of one were deemed inconsistent with the maintenance of the other."

The court also said (343 U.S. 734, 72 S.Ct. 961):

> "It has been stated in an administrative ruling of the State Department that a person with a dual citizenship who lives abroad in the other country claiming him as a national owes an allegiance to it which is paramount to the allegiance he owes the United States. That is a far cry from a ruling that a citizen in that position owes no allegiance to the United States. Of course, an American citizen who is also a Japanese national living in Japan has obligations to Japan necessitated by his residence there. There might conceivably be cases where the mere nonperformance of the acts complained of would be a breach of Japanese law. He may have employment which requires him to perform certain acts. The compulsion may come from the fact that he is drafted for the job or that his conduct is demanded by the laws of Japan."

Appellant cites no authority indicating that a claim by appellee of exemption from Japanese military service on the ground of his American citizenship would have any legal basis.

Appellant's brief, page 30, also relies on the claim that there was no evidence of "putting in fear". But appellee's military service began three years before the war between the United States and Japan began; and a year before the war appellee had asked to get out of the army and had been turned down. To have asked for a release after the war started would have been foolhardy as well as without legal basis. If fear is a necessary element, the circumstances establish it.

We will cite some cases in an analogous field, dealing with the alleged loss of citizenship by a dual citizen. While as stated in appellant's brief, page 33, the burden of proof in that kind of case is heavily on the government, we think the quotations hereinafter set forth have some weight and are not necessarily based on the issue of burden of proof.

In *Tomasicchio v. Acheson,* 98 F.S. 166, 174 (D.C. D.C.) the court said:

> "The Government argues that the plaintiff was under a duty to protest against being drafted into the Italian army and not to submit without a contest. No doubt, however, a protest would have been futile and a refusal to take the oath would have been equally ineffective. The plaintiff might well have feared severe reprisals if he either protested or contested the order to respond to the draft. During the Fascist regime in Italy it would have been realistic to fear such an

> eventuality. The Government does not restrict its solicitude to stout-hearted men. The timid, the weak, and the ignorant are equally entitled to its protection. The law does not exact a crown of martyrdom as a condition to retaining citizenship."

Similar statements are to be found in *Okada v. Dulles,* 134 F.S. 183 (Cal. N.D.) and *Namba v. Dulles,* 134 F.S. 633 (Cal. N.D.).

In *Lehmann v. Acheson,* 206 F. 2d 592, 596-7 (C.A. 3) the court said:

> "Under the Convention of 1937, as a dual citizen of the United States and Switzerland, Lehmann was obliged to submit to conscription in the Swiss Army and the American consulate in Basel could not by any attempted intervention in his behalf have contravened the terms of the Convention, nor could Lehmann's protestations, no matter how formally registered with either the American consul or the Swiss authorities, have done so. Had Lehmann presented his American birth certificate and registered as an American citizen or sought, and even gained, the 'protection' of the American consulate and had he protested to the latter and the Swiss officials—all these steps would have been nothing more than a 'magnificent gesture', totally unavailing."

While this statement is based in part upon the Convention of 1937, the *Kawakita* case, supra, indicates that the rule stated in the Convention is no different from international law generally.

In *Pandolfo v. Acheson,* 202 F. 2d 38, 41 (C.A. 2) the court said:

"(9) The appellant also argues that plaintiff's failure to remove himself from the jurisdiction of the Italian authorities before he was called for military service in 1933 was the proximate cause of his induction and therefore the oath was taken voluntarily. But the recent decision of the Supreme Court in Mondoli v. Acheson, 344 U.S. 133, 73 S.Ct. 135, established that continued residence abroad after a minor citizen comes of age does not forfeit citizenship. Since the 1907 Act does not impose any duty to make an election to return to the United States when the minor comes of age, we cannot accept the argument that whatever he does thereafter in the foreign country is done voluntarily."

---

2. RESIDENCE.

The District Court held that appellee was not resident within enemy territory at the time of vesting or for approximately two years prior to that date, and so was not an enemy as that term is defined in Section 2(a) of the Act. We rely on the District Court's opinion on that point (R. 15-21). At the opening of the trial, counsel for appellant stated to the court that the issue as to appellee's residence was "whether he was a resident in Japan at the time the property was vested in 1947" (R. 39). Appellant's brief, pages 25-27, abandons this position and argues that if appellee was a resident of Japan at any time during the war he was an enemy even if he was not a resident at the time of vesting. In *Sacramento Suburban Fruit Lands Co. v. Melin,* 36 F. 2d 907, 909 (C.A. 9) the court said:

"Very generally is applied the rule that a theory accepted and acted upon by all in the trial court cannot be repudiated in the appellate court. Peck v. Heurich, 167 U.S. 624, 17 S.Ct. 927, 42 L.Ed. 302; Westlake Merc. F. Co. v. Merritt (Cal. App.) 262 P. 815."

See also

Fanchon & Marco Inc. v. Paramount Pictures, 215 F. 2d 167, 170 (C.A. 9) cert. den. 348 U.S. 912, 75 S. Ct. 293.

However, assuming appellant may on appeal change the theory upon which the case was tried, we submit that the issue was correctly defined and decided by the District Court. In *Hansen v. Brownell,* 234 F. 2d 60, 51 (C.A. D.C.), the court said:

"Assuming, *arguendo,* that the property was owned by Hansen, and that the fact that he resided in France on June 26, 1951, [the date of vesting], precluded classifying him an enemy under section 2(a) of the Act on the basis of residence in an enemy country, nevertheless his propaganda employment and activities for Germany during the war made him an enemy under section 2(b) as an agent of a government with which the United States was at war."

In three cases dealing with Section 2(a) of the Act it has been more or less assumed without discussion that the date of vesting is controlling. *Feyerabend v. McGrath,* 189 F. 2d 694 (C.A. D.C.); *Public Administrator v. Brownell,* 115 F.S. 139 (S.D. N.Y.) and *Akata v. Brownell,* 125 F.S. 6, 8 (D.C. Hawaii). It

is apparent therefore that the courts have felt that there may be some distinction between Sections 2(a) and 2(b) in this respect. The *Swiss National Insurance Company* case relied on in appellant's brief, page 25, does not support appellant's position for in that case the plaintiff's status as an enemy existed at the time of vesting. In the *Behn, Meyer & Co.* case also cited appellant's brief, page 25, plaintiff was never an enemy as defined in Section 2 of the Act, but its action was resisted on other grounds, and the court simply held that one never an enemy was entitled to recover under Section 9(a) of the Act.

Sections 2 and 9(a) of the Act define enemy in the present tense and, read literally, would allow recovery by any one not an enemy at the time suit is brought. That construction was rejected in the *Swiss National Insurance Company* case cited in the last paragraph above. Since Congress did not spell out the time for determination of enemy status, it is necessary for the courts to do so as a matter of reasonable construction. We submit that it is reasonable to hold to be nonresident, a person who was absent from enemy territory for a period of two years prior to vesting, whose person and property were entirely outside enemy jurisdiction, and whose return to Japan was problematical. (Russia is still holding possibly 10,000 Japanese prisoners. Time, October 29, 1956, p. 27. See also Encyclopedia Americana 1956, vol. 15, p. 744.)

One distinction of the residence situation from that of an enemy agent is that agency involves volition (Restatement of the Law of Agency, Section 15) and

affirmative aid to the enemy cause, whereas mere residence is a passive state.

Assuming, however, that appellant is right in contending that residence in Japanese territory at any time during the war makes one an enemy, the question of appellee's domicile may be of some relevance, although domicile is not controlling, as is pointed out in the district judge's opinion (R. 19). We submit that the evidence showed that appellee acquired American domicile at birth and never lost it.

Prior to the birth of appellee his parents had resided in this country for fourteen years and they continued to do so an additional twelve years thereafter, with the exception of a two year absence, 1917-1919. Long residence is some evidence of domicile (28 *C.J.S.* 15; 17 *Am. Jur.* 628). A person's domicile of origin is the domicile of his parents, the head of his family, or the person on whom he is legally dependant, at the time of his birth. It is generally, but not necessarily, the place of his birth (28 *C.J.S.* 10). Domicile of a minor ordinarily follows that of the father (28 *C.J.S.* 21) but that is not always true (see note 34, 28 *C.J.S.* 22). A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto (28 *C.J.S.* 30). The following appears at 28 *C.J.S.* 36:

> "*Original or domestic domicile favored.* Where facts are conflicting, the presumption is strongly

> in favor of an original, or former, domicile, as against an acquired one, and of a domestic, as against a foreign, domicile."

Evidence relating to the domicile of appellee and his parents is referred to under the heading "Evidence Relating to Domicile" page 23 of this brief. The evidence showed that appellee's father left this country for reasons of health in 1924. He retained a business foothold, a ranch, and ownership of a home in this country. It is reasonable to assume that he would have returned to this country if his health had improved. Appellee expressed the opinion that his parents did not intend to permanently reside or establish domicile in Japan when they left this country in 1924 and that his father did not regard his house in Hiroshima as his permanent residence. Appellee himself regarded Hiroshima as his home, but not as his permanent home. He intended to return to this country, where he had two brothers and the property in question, which included the home where his parents resided at the time they left this country in 1924. When appellee while at medical college and also at the Red Cross Hospital gave to those institutions a temporary address in Tokyo and a permanent domicile address in Hiroshima (R. 56, 57), he was simply following Japanese custom and the manner of Japanese official records (R. 102). Such records are not conclusive of domicile and can be overcome by other evidence (*Akata v. Brownell,* 125 F.S. 6, 10, supra).

Appellee, having been taken from this country without any volition on his part, never was free to return

to this country until he did so after the war, except while he was still a minor. When he attained majority he immediately became subject to compulsory military service. It is true that if he had done three years military service immediately after reaching the age of majority instead of asking for deferment in order to complete his education, he might have got out of the Army in 1935. However, we do not believe that his election to complete his education in Japan, at a time when he was economically dependent, was evidence of intent to relinquish his American domicile. We submit that neither appellee's father nor appellee ever lost his American domicile.

On the question of residence as defined in the Trading with the Enemy Act there are two cases with considerable factual similarity to this case. In *Kaku Nagano v. McGrath,* 187 F.2d 759 (C.A. 7) (affirmed by an equally divided court 342 U.S. 916, 72 S.Ct. 363; reaffirmed after trial, 212 F.2d 262), the plaintiff, an alien, after residing in this country for several years with her husband returned to Japan and remained there until after World War II, with the exception of a visit to the United States in the years 1932-1933. During all that time her husband continued to reside in the United States. Her reason for going to Japan was to supervise the education and marriage prospects of her children who could not enter this country. She established to the satisfaction of the court that she always intended to return to this country and the court held in spite of her actual presence in Japan

throughout the war that she was not resident within Japan. Although the plaintiff in that case had excellent reasons for being in Japan, her presence there was nevertheless entirely voluntary whereas appellee's was not.

Josephberg v. Markham, 152 F.2d 644 (C.A. 2) was an action brought on behalf of an incompetent naturalized citizen of this country who became afflicted with a mental disorder and returned to his native Italy for his health in 1931. Thereafter, both in Italy and in New York he was adjudged incompetent to deal with property. However, he was never committed to a mental institution although he spent occasional periods at a sanitarium as a voluntary patient. A majority of the court concluded that he did not have sufficient mental capacity to make his return to, and stay in, Italy voluntary acts. In summarizing its conclusions on the question of residence the court said (152 F.2d 649):

> "His physical presence in Italy at the time his property was seized was a condition not attributable as a matter of law to his volition; his property could not be used to aid the enemy; he was not engaged in trade with the enemy and he could engage in no commercial activities of any kind whatsoever. He was an American citizen whose presence in Italy for reasons beyond his control did not subject his property to any control or use by an enemy government and so did not make him a 'resident' of Italy within the meaning of the statute and executive orders under which his property in this country was seized."

We submit that because appellee was an American citizen and was removed from this country without any volition on his part, and was prevented from returning to this country by circumstances beyond his control, he was not resident within Japan.

---

3. IT IS CONSTITUTIONALLY DOUBTFUL THAT A CITIZEN'S PROPERTY MAY BE CONFISCATED UNDER THE TRADING WITH THE ENEMY ACT.

The last paragraph of the opinion in *Josephberg v. Markham,* the last case cited above, reads as follows:

> "(10,11) We are bound to construe the term 'resident' in so far as reasonably possible in a way to avoid either invalidating the statute and orders on constitutional grounds or raising a serious doubt as to their constitutionality. Federal Trade Commission v. American Tobacco Co., 264 U.S. 298, 307, 44 S.Ct. 336, 68 L.Ed.696, 32 A.L.R. 786; Ex parte Mitsuye Endo, 323 U.S. 283, 299, 65 S.Ct. 208; United States v. Shreveport Grain & El. Co., 287 U.S. 77, 82, 53 S.Ct. 42, 77 L.Ed. 175. If the term 'resident' is held to include a United States citizen in the situation of Cerutti and the statute and orders are construed to provide for the seizure and withholding of his property in this country, held here as it is, the failure to provide any remedy for its return or for just compensation to the owner for its seizure, other than what Sec. 9(a) affords, would create such a doubt. Becker Co. v. Cummings, 296 U.S. 74, 79, 56 S.Ct. 15, 80 L.Ed. 54."

Similarly the Supreme Court in Guessefeldt v. McGrath, 342 U.S. 308, 72 S.Ct. 338, in construing Section 39 of the Act, in a case involving an alien, said (342 U.S. 317, 72 S.Ct. 344):

> "(4) Moreover, a decision for the Government would require us to decide debatable constitutional questions. In suits by United States citizens, Sec. 9(a) has been construed, over the Government's objection, to require repayment of just compensation when the Custodian has liquidated the vested assets. Becker Steel Co. of America v. Cummings, supra; Henkels v. Sutherland, 271 U.S. 298, 46 S.Ct. 524, 70 L.Ed. 953; see Central Union Trust Co. of New York v. Garvan, supra, 254 U.S. at page 566, 41 S.Ct. at page 215; Stoehr v. Wallace, 255 U.S. 239, 245, 41 S.Ct. 293, 296, 65 L.Ed. 604. Such a construction, it is said, is necessary to preserve the act from constitutional doubt."

The court also said (343 U.S. 319, 72 S.Ct. 344):

> "Considering that confiscation is not easily to be assumed, a construction that avoids it and is not barred by a fair reading of the legislation is invited.
>
> "(6) The concern of the Trading with the Enemy Act with problems at once complicated and far-reaching in their repercussions. Instead of a carefully matured enactment, the legislation was a makeshift patchwork. Such legislation strongly counsels against literalness of application. It favors a wise latitude of construction in enforcing its purposes."

We do not contend that there is any case holding that the property of a citizen of the United States who comes wihin the definition of enemy in Section 2 of the Act may not be confiscated. On the other hand we know of no case that holds the contrary, in which the constitutional problem was discussed. (There are cases so holding where the constitutional problem was not discussed; see the first group of cases cited appellant's brief, page 28, but *Josephberg v. Markham,* supra, should be excluded from that group and *Feyerabend v. McGrath,* supra, should be added thereto). *Miller v. United States,* 11 Wall.269 cited appellant's brief page 28 was not decided under the Trading with the Enemy Act. It does support the proposition that confiscation of the property of citizens is a constitutional exercise of the war power given to the Congress by the Constitution; however, the case assumes that the war power is in this respect, unlimited, which seems contrary to the above statement in the *Guessefeldt* case. *Ecker v. Atlantic Refining Company,* 222 F.2d 618 (C.A. 4) sustained the constitutionality of the seizure of the property of a citizen but that case was not an action under Section 9(a) of the Act. Instead, the plaintiff attacked the validity of the vesting of the property and the action was not against the Attorney General but against a party who had purchased from the Attorney General. (The government had already voluntarily paid over to plaintiff the proceeds of sale less costs of administration and income tax.) We do not contend that the vesting of appellee's property was wrongful, for there was perhaps

reasonable ground for believing that it might be enemy owned property. We do, however, contend that appellee is entitled to return of the property under Section 9(a). The court said in the *Guessefeldt case,* 342 U.S. 313, 72 S.Ct. 341:

> "It is clear that the custodian can lawfully vest under Sec. 5 a good deal more than he can hold against a Sec. 9(a) action."

We submit that appellee committed no act justifying the confiscation of his property and is entitled to its return or to be compensated therefor under the Fifth Amendment; or that there is at least such doubt on the point that the Act should be construed so as to avoid such confiscation.

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4. STATUTE OF LIMITATIONS.

The first sentence of Section 33 of the Trading with the Enemy Act establishes the time limit for the filing of claims. The part of Section 33 which is immediately relevant here is the second sentence thereof reading as follows:

> "No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32(a) hereof."

Appellee's property was vested on December 9, 1947 (R. 29). At that time he was a prisoner of war in Siberia and remained such until December 4, 1948, when he was released and returned to Japan (R. 31). He returned to the United States and commenced this action as soon as he reasonably could, as found by the trial court (R. 31-32). The action was filed in his behalf on October 23, 1950 (R. 13) and the date of his return was December, 1950 (R. 15). The District Court held that the statute of limitations was tolled under these circumstances.

Osbourne v. United States, 164 F.2d 767 (C.A.2) was an action filed under a United States statute against the United States and others on account of injuries that were allegedly caused by the negligence of defendants shortly before December 8, 1941. On that date plaintiff was interned by Japan and he was returned to this country in October, 1945. The court held that the statute of limitations was tolled during the plaintiff's internment. The court said (page 769):

> "The Hanger case [73 U.S. 532] has been consistently followed in the federal courts. Its doctrine has been applied not only where the plaintiff was a citizen of the United States, but also where he was an enemy alien during a war. It has also been applied where the statute of limitations was of the substantive type involved here, not the ordinary type as in the Hanger case, because the considerations for so tolling the ordinary statute apply also to the special type. State courts, facing the same problem in cases involving limitations provisions in wrongful death

statutes, have held that the statute should toll for enemy aliens, despite silence on the subject in the statute itself.

"We see no reason why the Hanger doctrine should not govern here. The cases cited show there would be no doubt that a Japanese citizen employed as appellant was on the S.S. President Harrison would have been able to sue for similar injuries. It would seem the height of unreasonableness to grant such redress to one of our former enemies at the same time we denied it to a citizen who, through no fault of his own, was held prisoner by that enemy.

"Neither do we think that distinction should be made because of the type of statute of limitations involved. All statutes of limitation are based on the assumption that one with a good cause of action will not delay bringing it for an unreasonable period of time; but, when a plaintiff has been denied access to the courts, the basis of the assumption has been destroyed. Whatever the reasons for describing this type of statute of limitations as substantive rather than procedural—and we suspect the chief reason was to make the period of limitation named in the statute, rather than that of the form, control in cases brought in state courts—we think we do the distinction no violence by holding that either type of statute will toll for one who is a prisoner in the hands of the enemy in time of war."

Marcos v. United States, 106 F.S. 172, 122 Ct. Cl. 641, was an action against the United States for the value of cattle requisitioned by the United States

Army in the Philippine Islands during World War II. The court said (106 F.S. 176-177):

> "On the other hand when a suit cannot be filed within the normal period of limitations because of the existence of a state of war, the result is not attributable to any personal defect of the claimant, but rather to the international acts of nations for which all citizens are responsible. A superior power closes the courts to litigation with the enemy during such a period. The effect of the outbreak of war is to *suspend the normal operation* of the Statute of Limitations, and with the return of peace the Statute revives and continues to operate in the normal manner."

The court further said (page 177):

> "We, therefore, reaffirm the principle adopted in our earlier decision in this case that war, unlike 'legal disabilities,' impliedly suspended the normal operation of the Statute of Limitations, and that with the return of peace, plaintiff, whose cause of action accrued after the outbreak of war, had six years within which to file his suit.
>
> "The fact that plaintiff was an 'enemy' under the definitions of the Trading With The Enemy Act, 40 Stat. 411, as amended, 50 U.S.C.A. Appendix, Secs. 1-39, does not alter our above-stated conclusions. Rather, we find that Congress expressly provided in Section 8(c) of the Aact that the running of the Statute of Limitations should be suspended in certain designated situations, not herein material, and then concluded as follows:
>
> " '* * * *Provided, however,* That nothing herein contained shall be construed to prevent the sus-

pension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.'

"In enacting this provision Congress had before it, as part of the Senate Reports accompanying the bill, a legal memorandum which listed the authorities holding that war suspended the operation of the Statute of Limitations. S.Rept. 111, 65th Cong., 1st Sess., pp. 21, 22; S.Rept. 113, 65th Cong., 1st Sess., pp. 21, 22. In light of the fact that Congress was fully informed of the leading decisions, it is our opinion that Congress did not intend by enacting the Trading With The Enemy Act to alter the existing state of the law, but merely intended, by incorporating Section 8(c) into the Act, to confirm the general principle which suspends the running of the Statute of Limitations against the 'enemy' while that status exists. First National Bank of Pittsburgh v. Anglo-Oesterreichische Bank, 3 Cir., 37 F.2d 564, 567."

In the District Court appellant sought to distinguish the *Osbourne* case, supra, on the ground that the plaintiff in that case was imprisoned by Japan, an enemy country, whereas appellee was imprisoned by Russia, an ostensible ally. However, it is a matter of juidicial notice that Russia is behind an Iron Curtain (*In re Kleins Estate,* 123 N.Y.S.2d 866, 870). In *People ex rel. Choolokian v. Mission of Immaculate Virgin,* 76 N.Y.S.2d 509; modified and affirmed 300 N.Y. 43, 622, 88 NE 2d 362, 90 NE 2d 486; cert. den. 339 U.S. 912, 70 S.Ct. 570, the court said (76 N.Y.S.2d 512):

> "From an exchange of notes between the State Department of our Government and the Soviet Government in April and May 1947, it appears that 'notwithstanding all their personal efforts and the repeated representations of the American Embassy in Moscow' the Soviet Government for some time has refused to permit American citizens to leave Soviet territory for the United States and has even refused to permit representatives of our Government to interview such citizens. It has also refused to permit American citizens to bring their wives back to this country. Probably at no other time in our history as a nation have we been confronted with a situation where our citizens have been treated virtually as prisoners by a foreign power with whom we are at peace. Recent reliable reports from France indicate that their citizens are similarly treated by the Soviet. New York Herald Tribune, December 23, 1947, page 1."

There is evidence that similar conditions still prevail. 102 Congressional Record, p. A6218. We submit that appellee had no access to the courts of the United States during his imprisonment in Siberia.

In the *Marcos* case, supra, the war was held to have terminated as to the Philippines on the date of the surrender of Japan, which "marks the restoration of the right of free commercial intercourse, and of access to this court." (106 F.S. 178). Appellee's access to the courts of this country was not restored until at least April 6, 1949. In House Report No. 1114, 83rd Congress, 2nd Session, dealing with the

954 amendment to Section 33, the following appears vith reference to persons in Japan:

> "However, such persons were unable to file for the return of their property until 24 days before the expiration of the statutory period because of regulations of the occupation authorities in Japan which prohibit transmittal to the United States of 'papers of legal procedure.'" U.S. Code Congressional and Administrative News, 1954, Vol. 2, page 1998.

This action was filed October 23, 1950, less than vo years after access to the courts became available) appellee.

In attempting to distinguish the *Osbourne* case and ne Supreme Court cases upon which it relies, apellant's brief, page 17, states:

> "To apply that rule to Section 33 would be to say that in 1946 Congress enacted a statute of limitations which would come into effect it knew not when, and that, when in 1948 it put the date of April 30, 1949, in Section 33, it did not expect that date to have any effect."

Ve do not believe that this is correct. In *Guessefeldt . McGrath,* 342 U.S. 308, 72 S.Ct. 338 the dissenting pinion (there is nothing to the contrary in the maprity opinion) said (342 U.S. 325-326, 72 S.Ct. 47-8):

> "The primary purpose of Section 9(a)—to provide for judicial return of property mistakenly seized from American citizens or nations of friendly countries—is preserved."

and in the note to the foregoing statement is the following:

> "13. Section 9(a) was originally designed to protect American citizens, S.Rep. No. 111, 65th Cong., 1st Sess. 8 (1917), and apparently the bulk of the claims filed under Sec. 9(a) are those of American citizens. Hearings before Senate Committee on the Judiciary on H.R. 4044, 80th Cong., 2d Sess. 44 (1948)."

Most American citizens reside in this country and only a small number of them were deprived of access to the courts by the war.

It must be presumed that when Congress enacted Section 33 of the Trading with the Enemy Act in 1946, Congress was aware of the court decisions tolling the statute of limitations on account of war. In 82 C.J.S. 794 the law is stated as follows:

> "All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it, . . .; they are therefore to be construed in connection with and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence, that is, they are to be construed with reference to the whole system of law of which they form a part. So the meaning and effect of statutes are to be determined in connection, not only with the common law, . . ., and the constitution, but also with reference to other statutes, . . . and the decisions of the courts;"

See also *Globe etc. Ins. Co. v. Draper,* 66 F.2d 985, 991 (C.A. 9); *In re Big Blue Min. Co.,* 16 F.S. 50, 52

(N.D. Cal.). These principles are particularly applicable here, for Section 33 was added to an act in which Section 8(c) already recognized the tolling of statutes of limitation by war, as held in the *Marcos* case, supra.

One further matter on this phase of the case requires discussion, the proviso at the end of Section 33 reading:

> "but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32(a) hereof."

Appellee's claim is still pending (R 30, Finding III) and it was filed within the time prescribed by Section 33 as amended in 1954 (appellant's brief page 16). It was not filed prior to the end of the two-year period referred to in said proviso. However, in *First Nat. Bank of Portland v. McGrath,* 97 F.S. 77 (D.C. Ore.) the court held that the effect of said proviso is not simply to add to the two-year period referred to therein the time in that period during which the claim was pending. In that case, the claim was filed eight months and eight days before the end of the two-year period, but the action was not filed until 18 months and 28 days after the end of the period. The court said (page 80):

> "(3, 4) Section 33 provides in part, '* * * but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 * * * hereof.' While this provision might have

been more precisely drawn, it would appear that Congress intended to follow the general pattern of statutes of limitation and provide for the tolling of the statute in those instances in which claims were timely filed. To hold otherwise would be, in the language of the Court in *Stadtmuller v. Miller,* 2 Cir., 11 F.2d 732, 739, 45 A.L.R. 895, '* * * to impute to Congress an intention which the act does not in our opinion, warrant, and which is so repugnant to our ideas of justice and equity and that we cannot believe that Congress ever intended such a result.' "

This decision evidently impressed appellant's trial counsel for at the outset of the trial of appellee's case counsel stated that the statute of limitations was not in issue, giving as one reason:

"Incidentally, the law has been changed anyway and the time for filing claims has been extended, so that question is moot." (R. 38)

After the noon recess counsel, however, reserved the right to raise the question of the statute of limitations on appeal (R. 82).

First Nat. Bank of Portland v. McGrath, supra, was decided before 1954. It is the only case we have seen which discusses the proviso in question. *Pedersen v. Brownell,* 129 F.S. 952 (D.C. Ore.) and *Grabbe v. Brownell,* 140 F.S. 4 (E.D. N.Y.) cited appellant's brief, page 16, were decided after the 1954 amendment to Section 33 but did not refer to the aforesaid proviso. The *Pedersen* case was decided by the judge who decided the *First Nat. Bank of Portland* case, but the later decision did not refer to the earlier one.

The failure of Congress to amend the second sen-
tence of Section 33 in 1954 may indicate an intent
not to extend the time for filing suits. On the other
hand, Congress also chose not to alter the proviso
n question. We submit that since appellee's claim
was timely filed, the time for filing suit was tolled dur-
ng the pendency of the claim.

CONCLUSION.

Appellant has not shown any error in the record,
or any justification for confiscating appellee's prop-
erty, and the judgment should be affirmed.

Dated, Fresno, California,
November 23, 1956.

Respectfully submitted,
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Attorneys for Appellee.

(Appendix Follows.)

Appendix.

Appendix

TRADING WITH THE ENEMY ACT, AS AMENDED
(40 Stat. 411, 50 U.S.C. App. §1, et seq.).

* * *

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

* * *

SEC. 8. . . .

(c) The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing

any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the

noney or other property so held by the Alien Prop-
erty Custodian or by the Treasurer of the United
States, or of the interest therein to which the Presi-
lent shall determine said claimant is entitled: *Pro-
vided,* That no such order by the President shall bar
iny person from the prosecution of any suit at law or
n equity against the claimant to establish any right,
itle, or interest which he may have in such money or
other property. If the President shall not so order
vithin sixty days after the filing of such application
or if the claimant shall have filed the notice as above
equired and shall have made no application to the
President, said claimant may institute a suit in equity
n the Supreme Court of the District of Columbia or
n the district court of the United States for the dis-
rict in which such claimant resides, or, if a corpora-
ion, where it has its principal place of business (to
vhich suit the Alien Property Custodian or the Treas-
irer of the United States, as the case may be, shall
e made a party defendant), to establish the interest,
ight, title, or debt so claimed, and if so established
he court shall order the payment, conveyance, trans-
er, assignment, or delivery to said claimant of the
noney or other property so held by the Alien Prop-
erty Custodian or by the Treasurer of the United
States or the interest therein to which the court shall
letermine said claimant is entitled. If suit shall be
o instituted, then such money or property shall be
etained in the custody of the Alien Property Cus-
odian, or in the Treasury of the United States, as
provided in this Act, and until any final judgment

or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

* * *

SEC. 33.[24] No return may be made pursuant to section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from the enactment of this amendment, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later; except that return may be made to a successor organization designated pursuant to section 32(h) hereof if notice of claim is filed before the expiration of one year from the effective date of this Act. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the prop-

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[24]Section 33 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925). Amended by Public Law 370, 80th Cong., approved August 5, 1947 (61 Stat. 784), by Public Law 874, 80th Cong., approved July 1, 1948 (62 Stat. 1218), by Public Law 292, 83d Cong., approved February 9, 1954 (68 Stat. 7), and by Public Law 626, 83d Cong., approved August 23, 1954 (68 Stat. 767).

erty or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32(a) hereof.

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